

## **The complaint**

Mr V complains about the advice given by Tideway Investment Partners LLP ('Tideway') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS'), to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr V is being represented by a professional third party but for ease of reading this decision I'll largely refer to representations as being made by Mr V.

## **What happened**

In March 2016, Mr V's employer announced that it would be examining options to restructure its business including decoupling the BSPS (the employers' DB pension scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, it was announced that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed between the BSPS trustees, PPF and the pensions regulator. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr V's employer would be set up – the BSPS2.

The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after. Updated transfer valuations were then provided by the BSPS trustees to qualifying members, reflecting the improved funding position – with the cash equivalent transfer value ('CETV') of Mr V's pension being £797,762.37. And in October 2017 members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Mr V contacted Tideway for advice in October 2017. Tideway has said he was referred to it by another business, which acted as an introducer.

A fact-find was completed on 9 October 2017 to gather information about Mr V's circumstances and objectives. Amongst other things it noted that Mr V was 46 in good health and married to Mrs V, who was 40. They had three financially dependent children. Mr V was employed full time. In addition to his BSPS benefits, Mr V was also a member of his employer's new defined contribution ('DC') pension scheme.

The fact-find said Mr V hoped to retire at age 58 and Mrs V hoped to retire at age 55. And Mr V thought they might need a combined annual income of £30,000 per year. There was also a section assessing Mr V's attitude to risk, which was deemed to be 'low to medium'.

There was a follow up call between Tideway and Mr V on 24 November 2017, in which his circumstances were further discussed. Mr V acknowledged that he might not in fact need an

income of £30,000 per year in retirement and his essential spending was likely to be around £1,000 per month. What interested him about potentially transferring was flexibility if he needed it and the opportunity to potentially leave money for his children, via the lump sum death benefits. And he was also worried the BPS2 could potentially also fall into the PPF in the future. It was also confirmed that Mr V had very little investment experience.

On 29 November 2017, Tideway advised Mr V to transfer his BPS pension benefits into a SIPP with a named provider. The suitability report said Tideway believed Mr V could afford to give up the guarantees the BPS provided, and a transfer would allow him to meet his objectives while still providing a sustainable income. I understand the transfer went ahead in line with Tideway's recommendation.

Mr V complained to Tideway in 2022 about the suitability of the transfer advice. Tideway didn't uphold Mr V's complaint. It said Mr V had been clear about his objectives, was motivated to transfer and had made an informed decision to go ahead. It also said a specialist review of the advice had found it to be suitable. And Tideway said it did not agree that Mr V was likely to have suffered a loss as a result of the transfer.

Mr V referred his complaint to the Financial Ombudsman Service. One of our Investigators considered it. He didn't think Tideway's advice was in Mr V's best interests. So, the Investigator recommended Tideway establish if Mr V had suffered a financial loss as a result of its advice. Our Investigator also recommended Tideway pay Mr V £200 for the distress caused.

Tideway initially said it would like an Ombudsman to make a decision on the matter. So, the complaint was referred for an Ombudsman's decision.

Tideway then said, whilst it didn't agree with the Investigator's findings, it would agree to settle the matter in line with the Investigator's recommendation. And it said it had carried out a redress calculation which indicated Mr V had not incurred a loss. Mr V didn't initially respond when informed of this, so the complaint continued to await an Ombudsman's decision.

The regulator, the Financial Conduct Authority ('FCA'), has since developed a BPS-specific redress calculator. The calculator was developed for the BPS consumer redress scheme. But it can still be used to carry out calculations in non-scheme cases, like Mr V's complaint with the Financial Ombudsman Service. Our Investigator informed both Mr V and Tideway, that if the Ombudsman considering the case decided to uphold it, they may require Tideway to calculate any redress due using the FCA BPS-specific calculator.

Tideway said, while it would be willing to potentially run a further calculation to resolve matters, as Mr V hadn't responded to its earlier calculation, it believed this may still not resolve things.

Mr V's representatives then said he would like an Ombudsman to make a decision on the matter as he didn't think the amount the Investigator had recommended Tideway pay in respect of the distress caused was sufficient.

In the meantime, we had contacted Mr V's pension provider to request up to date information about his pension to assist with a calculation. We shared this with Tideway and it has run a new calculation, using the FCA's BPS-specific redress calculator. It has shared that with us, and the calculation again shows Mr V has not incurred a loss. And we have provided a copy of this separately to Mr V's representatives.

As however Mr V has said he does not agree with the Investigator's recommendation around

the payment for distress, and the complaint therefore remains unresolved, I'm now making my decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Although Tideway initially said it wanted an Ombudsman to decide the matter as it didn't agree with the Investigator's opinion, it has now indicated it is willing to resolve the complaint in line with the Investigator's recommendation. And it has carried out a redress calculation. With that in mind, I don't see the need to address the suitability of its advice to Mr V in detail. However, I would note that I agree with the Investigator's view that the advice was unsuitable for largely the same reasons. I'll briefly explain why.

Tideway said to match the benefits that Mr V would've been entitled to under the DB scheme at age 65, he'd need to achieve growth of 4.1% per year net of fees. The suitability report suggested though that those fees were potentially around 1.77% per year. While an illustration from the recommended pension provider indicated these were potentially around 1.56%. So, it appears, just to match the benefits being given up, Mr V was likely to need at least 5.6% growth per year. And taking into account Mr V's attitude to risk, the relevant discount rate and the regulator's standard projections at the time, I don't think achieving this consistently could reasonably have been said to be likely. And the rate of return required to replicate benefits for retiring earlier was likely to be even higher - because benefits would have to be paid for longer and the investment horizon to retirement was shorter.

The suitability report also indicated, that to replicate the benefits the DB scheme would provide Mr V at age 65, he'd need a fund value of around £1,690,000. But an illustration from the recommended provider said that, even if the mid-rate growth was achieved all the way to age 75, the fund was likely to be worth £939,000.

Because of these things I think Mr V appeared likely to receive benefits of a lower value by transferring. Which, in my view, means a transfer wasn't in his interests.

Flexibility to retire around age 58 was discussed as a reason for transferring. But Mr V could've drawn benefits early under either the BPS2 or the PPF – including from age 58. The amounts that the suitability report suggested he'd be entitled to take (a starting annual pension of £24,260 or £23,250 respectively) would've significantly exceeded his expected essential expenditure. They wouldn't have provided the £30,000 per year Mr V talked about. But he said at the time of the advice it was difficult to know what his needs would actually be in retirement, and he thought he might not really need the amount he initially said. And anyway, Mr V was building benefits through his employer's new DC pension. By the time he reached age 58, based on his salary and the contributions being made – and before even accounting for growth or increases in salary or contributions – this pension appeared likely to be worth in excess of £100,000. The benefits from this could've been taken flexibly, to allow him to draw a greater income in the earlier years of his retirement had he needed to. So, I don't think he needed flexibility or to transfer to meet his objective of retiring early.

I'm also conscious though that Mr V was only 46 at the time of the advice and was a significant number of years away from when he thought he might retire. His circumstances, objectives or aims could've changed over the years that followed. And I don't think his plans for retirement were set in stone. So overall, I think it was too soon for an irreversible decision to transfer out of his DB scheme for flexibility in his pension arrangements to be considered in his best interests. Particularly when the BPS2 would've still provided the option to transfer out at a later date if his circumstances required it.

While death benefits are an emotive subject and when asked, most people would like their loved ones to be taken care of when they die, the priority here was what was best for Mr V's retirement because a pension is primarily designed to provide income in retirement. Life insurance would appear to have potentially been a suitable and affordable alternative. And overall, I don't think the alternative death benefits offered by a personal pension meant a transfer was in Mr V's best interests.

I can't see that Mr V had an interest in or the knowledge to be able to manage his pension funds on his own. So, I think him having control of his pension was somewhat overstated as a reason for transferring. I don't think there was anything to support that the BPS2 and its future prospects ought to have given Mr V cause for concern. It was separate from his employer and concerns about this seem to have been driven by the negative sentiment the consultation had created. And I don't think the prospect of transferring to the PPF was as bad as Mr V may've thought or that his concerns around this meant a transfer was in his best interests.

Overall, I haven't seen persuasive reasons why it was clearly in Mr V's best interest to give up his DB benefits. And while Mr V may've entered discussions with Tideway thinking a transfer was potentially a good idea, Tideway's role wasn't to put in place what Mr V might've thought he wanted. It was to give him objective advice. Ultimately Tideway advised Mr V to transfer. And I think he relied on that advice. If Tideway, a professional adviser whose expertise he had sought, had explained why it wasn't in his best interests to transfer I think he'd have accepted that advice.

As I've explained though, Tideway has indicated it is willing to settle the complaint as the Investigator recommended. So, what is left for me to decide is what is a fair way to settle matters.

### **Putting things right**

The aim is to put Mr V back in the financial position he would have been in at retirement had he remained in the DB scheme. Tideway has now carried out a calculation using the specific BPS calculator provided by the FCA which is what I would expect it to do in the circumstances.

The calculator uses economic and demographic assumptions, which the FCA updates on a regular basis, to calculate how much a consumer needs in their pension arrangement to secure equivalent BPS retirement benefits that they would have been entitled to under either BPS2 or the PPF (as uplifted to reflect the subsequent buy-out), had they not transferred out.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due. That means, even though we might've found that the transfer wasn't in a consumer's best interests, it doesn't automatically mean they are worse off or will be entitled to compensation. That is something the calculation will determine.

The BPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BPS, BPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I have checked the inputs that were entered by Tideway which are personal to Mr V. These include his personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he had not been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and that he would have taken his DB benefits at age 65. This is in line with the Investigator's recommendation and what the FCA suggests will usually be a reasonable assumption – and I think this is fair here.

Overall, based on what I've seen, Tideway has generally carried out the calculation appropriately. I'm satisfied it's done so in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4:

<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

The calculation in Mr V's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. So, I'm satisfied that Mr V has not suffered a financial loss by transferring his pension. And as an appropriate calculation has now been carried out by Tideway, I don't think it needs to do anything further in respect of any potential financial loss.

Our Investigator also recommended that Tideway make a payment of £200 for the distress caused by its advice. Mr V has said that this is insufficient given the distress he's been caused.

Most people, when they bring a complaint feel strongly about them, if they think something has gone wrong. I don't doubt after speaking to his representative, Mr V felt strongly about this complaint. But any award for distress is not intended to punish a business. Nor is it intended to make up for any loss of expectation that a redress calculation may result in.

Mr V received advice from Tideway in 2017. He first complained about that advice in 2022, after speaking to his professional representative. I haven't seen anything that suggests the advice caused him ongoing distress during that period as the first indication he potentially had any concerns about the advice seems to have been when he first discussed matters with his representative. Nor can I see he's been caused any significant inconvenience in that time. And indeed, his representative has brought his complaint for him, so the impact of having to make a complaint – which I wouldn't usually recommend compensation for anyway – has also been reduced.

I do accept Mr V was likely worried, after talking to his representative, that the advice might not have been suitable for him. Particularly given the circumstances under which he first asked for this advice - when there was a lot of uncertainty regarding the pension scheme. And this wouldn't have occurred but for the advice that is the subject of this complaint. But I think it's likely that, even some of those BSPS members who didn't take advice and remained in the scheme suffered similar worries, wondering if they'd made the right choice. And the calculations Tideway have carried out have shown Mr V hasn't incurred a financial loss, which I hope provides some reassurance.

I do think Mr V's concerns, since raising the complaint, were likely, in my view, to have been more than the levels of frustration and annoyance you might reasonably expect from day-to-day life. But while I appreciate this will come as a disappointment to Mr V, I think the award of £200 recommended by the Investigator, is fair and reasonable in the circumstances.

**My final decision**

I uphold this complaint and require Tideway Investment Partners LLP to pay Mr V £200 for the distress this matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 16 February 2024.

Ben Stoker  
**Ombudsman**